



not for profit | the essential trustee

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what you need to know

In June 2005 the Charity Commission re-issued its guidance CC3 on 'What every Trustee should know'. This publication is targeted at every Trustee or director on the governing board of a charity, or those who are about to take up a trustee position.

The guidance has been reissued due to new or changing responsibilities of Trustees and includes ways in which the Charity Commission can assist and support charities in certain areas. It also provides brief answers to a series of questions and highlights the additional considerations and difficulties that can arise in practice. In essence the guidance is about 'what is expected of someone who is appointed to act as a charity Trustee.'

what are charities

The publication includes a brief outline of the charity framework and describes what charities are. It states:

'To qualify as a charity, an organisation has to meet strict conditions about its overall purposes, also referred to as its objects. The organisation also has to be set up with a constitution or rules which meet certain conditions. These rules are usually referred to as a charity's governing document.'

It also states that 'Charity Trustees are responsible for controlling the management and administration of a charity. Charity Trustees come from all walks of life, and are united by their wish to create positive change in society.'

legal and regulatory requirements

The publication highlights areas where there is a specific legal or regulatory requirement affecting Trustees or the charity, as distinct from areas where Trustees 'should' act in a particular way. Areas including the word 'should' are regarded as minimum good practice, but for which there is no specific legal requirement.

The publication is split into five parts:

- trustees and their responsibilities
- compliance
- duty of prudence
- duty of care
- what to do 'if things go wrong'.



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trustees and their responsibilities

The guidance defines charity Trustees as 'the people who serve on the governing body of a charity' and they may be known as 'Trustees, Directors, Board Members, Governors or Committee Members.'

Trustees have, and must accept, ultimate responsibility for directing the affairs of a charity and ensuring that it is solvent, well-run and meeting the needs for which it has been set up.

Specific questions answered in this section include those on eligibility, appointment and resignation of trustees, length of appointment, delegation and decision making processes.

compliance

Trustees must ensure that the charity:

- complies with charity law and with the requirements of the Charity Commission as regulators, and in particular that the charity prepares reports, annual returns and accounts as required by law
- does not breach any rules or requirements laid down in its governing document, and remains true to the charitable purpose and objects set out therein
- complies with any other legislation or regulatory requirements which govern the activities of the charity
- acts with integrity, and avoids any personal conflicts of interest or misuse of charity funds or assets.

Specific questions covered by the guidance include those relating to payment and employment of trustees, registration requirements, duties to prepare accounts and the laws and regulations which charities must comply with.

duty of prudence

Trustees have a duty to be prudent and ensure that:

- The charity is and will remain solvent
- Charitable funds are only used in furtherance of the charity's objects
- The charity avoids activities that might place its endowment, funds, assets or reputation at undue risk
- Special care is taken when investing charitable funds or borrowing funds.

The specific questions answered in this section cover the financial duties of Trustees, the principles/duties they must follow and other specific matters relating to the use of charitable funds and rights relating to land.

duty of care

Trustees owe a duty to use reasonable care and skill in their work using their personal skills and experience to ensure that the charity is well run and efficient. Where there may be a material risk to the charity or where the trustees may be in breach of their duties, they should consider obtaining external professional advice.

The specific questions answered in this section include those relating to the definition of the statutory duty of care, the frequency of Trustee meetings and other areas which Trustees must consider in relation to the often complex scenarios in running and operating a charity.

if things go wrong

The Charity Commission, as well as being a regulatory body, also offers information and advice to charities and has powers to look into problems and help resolve them where necessary.

Trustees may be personally liable for any debts or losses that the charity faces depending on the circumstances and the charity's governing document, although personal liability is rare provided that the Trustees have followed best practice and acted in the best interests of the charity.

Specific areas in this section include the liabilities of Trustees, rules relating to personal liability insurance acquired by the charity for its Trustees and whether a charity can be wound up.

The guidance concludes with useful contact details of various organisations which can provide further guidance or advice in certain areas.

summary

This fact sheet highlights some of the important issues and questions which Trustees regularly ask. The guidance note is not a substitute for specific advice regarding the issues faced by charities but it is a useful starting point for Trustees who are unsure of their roles and responsibilities.

The role of the Trustee is changing. The legal and regulatory framework in which Trustees operate is often complex and requires professional knowledge and experience. All Trustees should have a thorough understanding of the roles, duties and liabilities they face before they take up a position.

disclosure requirements for the annual report

Trustee recruitment, selection and induction has already been reviewed by the Charity Commission in Regulatory Study 1 (RS1) back in March 2002, and the SORP 2005 includes a requirement for charities to disclose the training received by their Trustees in their annual report. We are now in a world of increasing transparency and public accountability.

We recommend that all Trustees obtain a copy of the Charity Commission Guidance CC3 *The Essential Trustee : What you need to know*. Copies are available to download from the Charity Commission website or hard copies are available directly from the Charity Commission.

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about haysmacintyre

haysmacintyre, Chartered Accountants and business advisers, works with over 550 charities and not-for-profit organisations in the UK and overseas. Our services include the full range of audit, tax, VAT and comprehensive advisory services. Our multi-disciplinary specialist team has extensive sector experience working for a diverse range of charities. We are based in one location which ensures an integrated and comprehensive approach to our clients' requirements.

haysmacintyre is a founding member of MSI Global Alliance (MSI), an international alliance of independent legal and accounting firms, with 250 members in 100 countries.



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